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No.

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In the Supreme Court of the United States

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VLADIMIR SHEKOYAN,

*Petitioner*

v. \_\_\_\_\_

SIBLEY INTERNATIONAL, INC.,

*Respondent.*

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ON PETITION FOR WRIT OF *CERTIORARI*  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE D.C. CIRCUIT

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PETITION FOR A WRIT OF *CERTIORARI*

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DAWN V. MARTIN, ESQUIRE  
LAW OFFICES OF DAWN V. MARTIN  
1090 VERMONT AVENUE  
SUITE 800  
WASHINGTON, D.C. 20005  
(202) 408-7040 TELEPHONE  
(703) 642-0208 FACSIMILE

## QUESTIONS PRESENTED

A. What is the definition of a "U.S. national," in the context of employment, immigration, criminal and/or tort law?

B. Does *Spector v. Norwegian Cruise Lines*, 125 S. Ct. 2169 (2005), require the extra-territorial application of U.S. law where U.S. nationals are affected and application will not result in a conflict of law?

C. Does Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) protect a permanent legal resident of the United States, classified as a U.S. national, from employment discrimination while s/he is temporarily assigned abroad, to fulfill a U.S. government contract/mission?

D. Is an employee protected by the False Claims Act ("Whistleblower Act"), if he reports suspected misuse of government funds to his/her supervisors, or must s/he report the suspected misuse directly to the U.S. government to invoke the statute?

E. Under the abuse of discretion review standard, may an appellate court simply defer to the discretion of the trial court, without an independent analysis of the facts or the law?

## TABLE OF CONTENTS

QUESTIONS PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTES AND REGULATIONS .....	1
STATEMENT OF THE CASE .....	2
REASONS FOR GRANTING THE WRIT .....	5
<i>Shekoyan v. Sibley Int'l Corp.</i> , 217 F. Supp. 2d 59 (D.D.C. 2002) Incorrectly Defines "U.S. National" ...	5
Title VII of the Civil Rights Act of 1964 Applies to the Sibley-Shekoyan Relationship .....	7
"Whistleblower," is Protected under the FCA if s/he Reports Suspected Fraud against the Government Internally, rather than to the Government .....	24
Summary Judgment was Improperly Granted Since Material Facts were in Dispute .....	26
The Appellate Court was Required to Examine the Material Facts to Determine whether the District Court Exercised an Abuse of Discretion .....	28
CONCLUSION .....	30
APPENDIX .....	A-1

## TABLE OF AUTHORITIES

### Cases:

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986) . . .	27
<i>Asemen v. The Islamic Republic of Iran</i> , 266 . . Supp. 24 (D.D.C. 2003) . . . . .	7
<i>Atchinson v. District of Columbia</i> , 73 F.3d 418 (D.C. Cir. 1996) . . . . .	28
<i>Blackmer v. United States</i> , 284 U.S. 421 (1932) . . . . .	5
<i>Blake v. Professional Travel Corp.</i> , 786 A.2d at 574 (D.C. App. 2001) . . . . .	9
<i>Canady v. Erbe Elektromedizin GmbH.</i> , 307 F. Supp.2d 2 (D.D.C. 2004) . . . . .	28
<i>Carreon-Hernandez v. Levi</i> , 543 F.2d 637 (8 <sup>th</sup> Cir. 1976) . .	7
<i>Childree v. UAP/GA Chem., Inc.</i> , 92 F.3d 1140 (11 <sup>th</sup> Cir. 1996), cert. denied, 519 U.S. 1148 (1997) . .	25
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957) . . . . .	26
<i>Cooter &amp; Gell v. Hartmax Corp.</i> , 496 U.S. 384 (1990) . .	29
<i>EEOC v. Aramco</i> , 499 U.S. 244 (1991) . . . . .	8,12,13,17
<i>Environmental Defense Fund v. Massey</i> , 986 F.2d 528 (D.C. Cir. 1993) . . . . .	13

<i>Hackett v. McGuire Bros., Inc.</i> , 445 F.2d 442 (3 <sup>rd</sup> Cir. 1971) .....	14
<i>Holy Trinity Church v. U.S.</i> , 143 U.S. 457 (1892) .....	15
<i>Hu v. Skadden</i> , 76 F. Supp 2d. 476 (S.D.N.Y. 1999) ..	9,19
<i>Hughes v. Ashcroft</i> , 255 F.3d 752 (9 <sup>th</sup> Cir. 2001) .....	7
<i>Hutchins v. Wilentz</i> , 253 F.3d 176 (3 <sup>rd</sup> Cir. 2001) .....	25
<i>In re Baiz</i> , 135 U.S. 403 (1890) .....	6
<i>Kowal v. MCI Communications Corp.</i> , 16 F.3d 1271 (D.C. Cir. 1994) .....	26
<i>Marquez-Almanzar v. INS</i> , 418 F.3d 210 (2d Cir. 2005) ...	7
<i>Martin v. Holiday Universal, Inc.</i> , 1990 U.S. Dist. LEXIS 18102 (D.D.C. 1990) .....	9
<i>McCulloch v. Sociedad Nacional de Marineros de Honduras</i> , 372 U.S. 10 (1963) .....	16
<i>McKennon Nashville Banner Publishing Co.</i> , 115 S. Ct. 879 (1995) .....	14
<i>McKenzie v. BellSouth Telecomms, Inc.</i> , 219 F.3d 508 (6 <sup>th</sup> Cir. 2000) .....	25
<i>Mota v. University of Texas Houston Health Science Center</i> , 261 F.3d 512 (5 <sup>th</sup> Cir. 2001) .....	9
<i>Mkes v. Strauss</i> , 889 F. Supp. 746 (S.D.N.Y. 1995) .....	25

<i>Neal v. Honeywell, Inc.</i> , 33 F.3d 860 (7 <sup>th</sup> Cir. 1994) . . . . .	25
<i>Neely v. Club Med Sales, Inc.</i> , D.C. Civ. No. 91-cv-07416	21
<i>Ofori-Tenkorang v. American International Group, Inc.</i> , 2005 U.S. Dist. LEXIS 20415 (S.D.N.Y. 2005) . . . . .	9
<i>Oliver v. U.S. Dep't. Of Justice</i> , 517 F.2d 426 (2d. Cir. 1975) . . . . .	7
<i>Quarles v. General Investment &amp; Development Co.</i> , 2003 U.S. Dist. LEXIS 3962, (D.D.C. 2003) . . . . .	9
<i>Robertson v. Bell Helicopter Textron</i> , 32 F.3d 948 (5 <sup>th</sup> Cir. 1994) . . . . .	25
<i>Shekoyan v. Sibley Int'l. Corporation</i> , 217 F. Supp. 2d 59 (D.D.C. 2002) . . . . .	1,5,6,10
<i>Shekoyan v. Sibley Int'l. Corporation</i> , 309 F. Supp. 2d 9 (D.D.C. 2004) . . . . .	1,26
<i>Shekoyan v. Sibley Int'l. Corporation</i> , 409 F.3d 414 (D.C. Cir. 205) . . . . .	1,9,15,29
<i>Spector v. Norwegian Cruise Lines</i> , 125 S. Ct. 2169 (2005) . . . . .	8,9,15,16,18
<i>Steele v. Bulova Watch Co.</i> , 344 U.S. 280 (1953) . . . . .	5
<i>Sullivan v. State of Sao Paolo</i> , 122 F.2d 355 (2d Cir. 1941)	6
<i>Theagene v. Gonzales</i> , 411 F.3d 1107 (9 <sup>th</sup> Cir. 2005) . . . . .	7

<i>Torrico v. IBM</i> , 2004 U.S. Dist. LEXIS 3691 (S.D.N.Y. 2004), 213 F. Supp.2d 390 (S.D.N.Y. 2002) .	8,9,18,19
<i>Trans-America Leasing, Inc. v. La Republica de Venezuela</i> , 200 F.3d 843 (D.C. Cir. 2000) . . . . .	26
<i>United States v. Coplon</i> , 84 F. Supp 472 (S.D.N.Y. 1949) .	6
<i>United States v. Corey</i> , 232 F.3d 1166 (9 <sup>th</sup> Cir. 2000) . . . .	11
<i>United States v. County of Arlington</i> , 702 F.2d 485 (4 <sup>th</sup> Cir. 1983) . . . . .	11
<i>United States v. Enger</i> , 472 F. Supp. 490 (D.N.J. 1978) .	6,11
<i>United States v. Morin</i> , 80 F.3d 124 (4 <sup>th</sup> Cir. 1996) . . . . .	7
<i>United States v. Wharton</i> , 320 F.3d 526 (5 <sup>th</sup> Cir. 2003) . . .	5
<i>United Steelworkers of America v. Weber</i> , 443 U.S. 193 (1979) . . . . .	15
<i>Yesudian v. Howard Univ.</i> , 153 F.3d at 736 . . . . .	24,25
<i>Zahodnick v. International Business Machines Corp.</i> , 135 F.3d 911 (4 <sup>th</sup> Cir. 1997) . . . . .	25
Statutes:	
8 U.S.C. § 1101(a)(22) . . . . .	6
31 U.S.C.S. § 3730(h) . . . . .	24
42 U.S.C. § 2000(e)-1(b) . . . . .	17

42 U.S.C. § 2000(e)-	8
Title VII, Civil Rights Act of 1964	4,7
False Claims Act	4
Vienna Convention of 1961, 23 U.S.T. 3227, Article 3(e)	10
Vienna Convention of 1961, Articles 20, 21, 22 and 23	10
Regulations:	
41 C.F.R. § 1.5(a)(3)	22
41 C.F.R. § 1.10	22
48 C.F.R. § 702.170-16	3,6,7
Miscellaneous:	
EEOC Decision 90-1, CCH EPG ¶ 6875	22
EEOC Policy Guidance No. 915.002	11-12
Executive Order 11246	21



## **OPINIONS BELOW**

### **U.S. Court of Appeals for the D.C. Circuit**

On June 3, 2005, the United States Court of Appeals for the D.C. Circuit affirmed the District Court's decisions of August 19, 2002, January 26, 2004 and March 19, 2004. *Shekoyan v. Sibley International, Inc.*, 409 F.3d 414 (App. 2) On September 9, 2005, the Court denied Mr. Shekoyan's motions for a rehearing 2005 U.S. App. LEXIS 19630 (App. 20) and rehearing *en banc*. (D.C. Cir. 2005) (App. 21)

### **Opinions of the District Court**

#### **1. August 19, 2002 Decision**

On August 19, 2002, the District Court denied Sibley International's *Motion to Dismiss* Mr. Shekoyan's False Claims Act Claim, but granted Sibley's *Motion to Dismiss* Mr. Shekoyan's claims filed under Title VII of the Civil Rights Act of 1964, on jurisdictional grounds. 217 F. Supp. 2d 59 (D.C. 2002) (App. 22)

#### **2. January 26, 2004 Order**

On January 15, 2003, Shekoyan filed a *Motion to Amend the Court's August 19, 2002 Order*. On January 26, 2004, the district court denied Shekoyan's motion. (App. 51)

#### **3. March 19, 2004 Decision**

On March 19, 2004, the district court issued a final order, dismissing Mr. Shekoyan's False Claims Act claims and declining to exercise jurisdiction over his pendant D.C. claims. 309 F. Supp. 2d 9 (D.D.C. 2004) (App. 62).

## **JURISDICTION**

The judgment of the court of appeals was entered on June 3, 2005. (App. 2) The court of appeals denied rehearing *en ban* on September 9, 2005. (App. 20). This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

## **STATUTES AND REGULATIONS**

See Addendum.

## **STATEMENT OF THE CASE**

Sibley, a U.S. corporation headquartered in Washington, D.C., was awarded a contract with the U.S. government, the United States Agency for International Development (USAID), a division of the Department of State, to implement the "GEAR" (Georgia Accounting Reform) Project, primarily to train accountants in the Republic of Georgia, formerly part of the Soviet Union. [Facts ¶¶3-4] Mr. Shekoyan, then a legal permanent resident of the United States, living in Washington, D.C. with his wife, also a legal permanent resident of the United States, responded to an advertisement in the Washington Post for a position as a Chief Financial Officer to work in Sibley's Washington, D.C. headquarters. [Facts ¶¶1-4]

Sibley did not hire Mr. Shekoyan for the advertised Chief Financial Officer position, but did hire him, with his first assignment as a Senior Training Advisor for the GEAR Project. [Facts ¶¶1-4]. Sibley promised Mr. Shekoyan that after the GEAR Project ended, it would assign him back to its D.C. headquarters. (Facts ¶ 8)

Mr. Shekoyan is now a naturalized American citizen. [Facts ¶1] He was born in Armenia, of parents born in the Republic of Georgia. Armenia and Georgia are neighboring Republics, formerly of the Soviet Union. At the time of his employment with Sibley, from 1997 through 1999, Mr. Shekoyan was a legal permanent U.S. resident, waiting out his five-year legal residency requirement before he could apply for citizenship. [Facts ¶¶1-2; S. Facts ¶¶ 25-26] Mr. Shekoyan began his employment in Washington, D.C., at Sibley headquarters, where he worked and was trained for several weeks. [Facts ¶18]

Sibley assigned Mr. Shekoyan to the Republic of Georgia to implement the GEAR Project, pursuant to a U.S. government contract. [Facts ¶¶16, 20, 28, 29] While Mr. Shekoyan was stationed in the Republic of Georgia, his wife

remained in their Washington, D.C. home. [Facts ¶¶18-19] Sibley deducted U.S. and D.C. income taxes from Mr. Shekoyan's paychecks and sent them to his D.C. residence and/or his D.C. bank. [Facts ¶ 22]

Mr. Shekoyan was a U.S. national, pursuant to a USAID regulation, 48 C.F.R. § 702.170-16: "U.S. national" ("USN") is "an individual who is a U.S. citizen or a non-U.S. citizen lawfully admitted for permanent residence in the United States." USAID and Sibley specifically classified Mr. Shekoyan as a "U.S. national," rather than as a "third country national (or Armenian)" throughout his employment with Sibley. [Facts ¶ 28]

Mr. Shekoyan performed the duties of every "U.S. national" position on the GEAR Project, including Acting "Chief of Party," or Project Manager. [Facts ¶¶ 39-42] His work was highly praised. [*Id.*] In mid-June of 1999, once Jack Reynolds joined the project as the Project Manager, or "Chief of Party" [Facts ¶ 52], Reynolds created a hostile work environment for Mr. Shekoyan, on the basis of his national origin. [Facts ¶ 53-58, 65, 67-71, 77-80, 90] Jack Reynolds repeatedly told Mr. Shekoyan and other persons that Mr. Shekoyan was not a "real" American. [Facts ¶ 54] Reynolds repeatedly mocked Mr. Shekoyan's accent [Facts ¶ 54] and made derogatory comments about people from the former Soviet Union, particularly Georgians. [Facts ¶ 55] Reynolds treated Mr. Shekoyan with extreme disrespect and denied him resources available to other employees to complete their work. [Facts ¶¶ 58] Reynolds also attempted to alienate Mr. Shekoyan from his co-workers. [Facts ¶¶ 58]

Mr. Shekoyan repeatedly informed Sibley officials in D.C. headquarters that Reynolds was harassing him. [Facts ¶¶ 68, 69, 71] Mr. Shekoyan also reported his concerns that USAID resources were being used by Sibley employees/contractors for their own personal and/or business purposes. [Facts ¶¶ 72-74] Sibley's Vice President told Mr.

Shekoyan not to "make too much noise" (Facts ¶ 72) and to work the problems out locally, since D.C. headquarters was busy getting the project extended. [Facts ¶ 71]

Immediately after receiving approval from USAID to extend the project, in October of 1999, Sibley fired Mr. Shekoyan and refused to provide him with a reference. [Facts ¶ 76] Sibley's President, Donna Sibley told officials at USAID, *in writing*, that Mr. Shekoyan was terminated for being insubordinate to Jack Reynolds, based only on the word of Jack Reynolds, which was vehemently disputed by Mr. Shekoyan and documentation submitted to Sibley officials by Mr. Shekoyan. [Facts ¶ 76-77, 82-83, 90-96]

Since his termination from Sibley, Mr. Shekoyan has been unable to secure employment in his field [Facts ¶ 101-103], despite a Ph.D in Finance and his experience with World Bank, finance, and accounting internationally. [Facts ¶ 37] Mr. Shekoyan is currently employed as a cashier at Safeway to help support his family, including his wife and young son. [Facts ¶ 105]

On October 20, 2000, Mr. Shekoyan filed suit, pursuant to Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, alleging employment discrimination on the basis of national origin. Mr. Shekoyan also sued under the False Claims, or "whistleblower" Act, for retaliatory termination for his reports to Sibley headquarters of evidence of misuse of U.S. government funds.

During the four years of litigation in federal district court, the court dismissed Mr. Shekoyan's Title VII claims for jurisdictional reasons, his False Claims Act claims on the merits, and declined to assert jurisdiction over Mr. Shekoyan's D.C. claims, forcing him to file his remaining claims anew in D.C. Superior Court, under the D.C. Human Rights Act, contract law and tort law, including claims of defamation and intentional infliction of emotional distress.